

**IN THE SMALL CLAIMS COURT
OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE**

7 November 2023

CASE No: AIFC-C/SCC/2023/0031

JSC "QAZAQ AIR"

Claimant

v

INDIVIDUAL ENTREPRENEUR ORUZHAYEV TALGAT KABDRUSEVICH

Defendant

JUDGMENT

Justice of the Court:

Justice Charles Banner KC

ORDER

1. **The Claim is allowed.**
2. **The Claimant's application for costs is granted.**
3. **The Defendant shall pay the Claimant the total sum of 1,306,447.50 Tenge within 7 days of this judgment.**

JUDGMENT

Introduction

1. By this claim, the Claimant seeks sums which it says the Defendant is liable to pay to it pursuant to a Service Purchase Agreement ("**the Agreement**") dated 25th April 2023.
2. The Agreement was for the provision by the Defendant to the Claimant of electronic document management services, for a price of 2,400,000 Tenge.
3. The Claimant says that the Defendant failed to perform its obligations under the Agreement, and that as a result the Claimant terminated the Agreement on 18th May 2023. It submits that as a result of these matters, it is entitled to a penalty of 1,200,000 Tenge pursuant to Clause 7.2.4 of the Agreement.
4. Clause 12.4 of the Agreement gives the AIFC Court exclusive jurisdiction over disputes arising out of or in connection with the Agreement.
5. The value of the claim is below USD 150,000 and therefore the claim falls within the jurisdiction of the AIFC Small Claims Court: see Rule 28.2(1) of the AIFC Court Rules.
6. Rule 28.12 of the AIFC Court Rules provides:

"Within 14 days after he is served with a Small Claim Form, a defendant shall:

(1) Admit the claim by filing and serving on the claimant an admission in accordance with Part 10;

(2) File a Small Claim Defence to the claim setting out:

(a) which parts of the claim are admitted;

(b) which parts are denied and his reasons for denying those parts; and

(c) the details of any counterclaim; or

(3) Make an application to dispute the jurisdiction of the SCC in accordance with Part 6 and in every case shall provide an email address for service and state his residential address. Where the defendant is not an individual, he shall state the address at which he carries on business.”

7. The Defendant has not taken any of the steps to which Rule 28.12 refers, or otherwise has not sought to resist the claim.

The Court’s findings

8. Upon considering the papers, the Court is satisfied that the Claim is well founded. The Court allows the claim and awards the Claimant the 1,200,000 Tenge that it seeks pursuant to the Agreement.

Costs

9. The Claimant also seeks an award of costs of 106,447.50 Tenge in relation to the costs of the translation and notarization of the documents it relies upon in these proceedings.

10. Under Rule 26.9(2) of the AIFC Court Rules, costs may only be awarded against a party in the AIFC Small Claims Court where that party has acted unreasonably.

11. The Claimant has described its repeated efforts since May 2023 to resolve this matter out of court by correspondence with the Defendant sent both by email and by hand, as well as by telephone and in person. No response or even acknowledgment was forthcoming by the Defendant at any stage. The Claimant was therefore left with no option but to commence these proceedings, which the Defendant then did not defend or even respond to.

12. In *Kostanai Minerals (Kazakhstan) v Factory Dnepropetrovskaya Volna OJSC (Ukraine)*, this Court observed at para. 18:

“...the kind of persistent failure and delay in complying with legal and procedural obligations demonstrated by the Defendant in this case, in particular the unexplained failure to comply with

the terms of the Mediation Agreement coupled with the equally unexplained failure to comply with Rule 28.12, may well in a future case lead to a finding of unreasonable behaviour so as to justify an award of costs under Rule 26.9(2).”

13. Having regard to the above, the Court finds that in the circumstances of the present case the Defendant has acted unreasonably, in persistently failing to engage with the Claimant’s repeated attempts to resolve this matter out of court, thereby forcing the Claimant to commence these proceedings, and thereafter failing without explanation to comply with Rule 28.12.

14. The Court therefore awards the Claimant the costs sought of 106,447.50 Tenge.

Conclusion

15. The Court orders the Defendant to pay the Claimant the total sum of 1,306,447.50 Tenge within 7 days of this judgment. Given the already extensive delays in paying the Claimant the sums due to it, there is no justification for a longer deadline.

By Order of the Court,

Charles Banner KC
Justice, AIFC Small Claims Court

Representation:

The Claimant was represented by Ms. Dina Askarova, lawyer, JSC “Qazaq Air”, Astana, Kazakhstan.

The Defendant was not represented.